

Judge: Dore  
Chapter: 13  
Hearing: 7/3/2013  
Place: Seattle  
Time: 9:30 a.m.

UNITED STATES BANKRUPTCY COURT FOR THE  
WESTERN DISTRICT OF WASHINGTON

In re: )  
TOVA E. CUBERT, ) Case No. 12-21877  
Debtor. ) UNITED STATES' OBJECTION TO  
CONFIRMATION OF AMENDED CHAPTER  
13 PLAN

COMES NOW the United States of America, by and through its attorneys, Jenny A. Durkan, United States Attorney for the Western District of Washington, and Catherine L. Campbell, Special Assistant United States Attorney for said District, on behalf of its Agency, the Internal Revenue Service (Service), and hereby objects to confirmation of the debtor's proposed Amended Chapter 13 Plan (Plan) filed on May 31, 2013. The Service submits the following grounds in support of its objection to confirmation:

1. The Service timely filed a proof of claim in the total amount of \$49,891.59. Of that amount, \$44,185.33 is a secured claim and \$5,706.26 is a general unsecured claim.

2. The claim has not been objected to and is deemed allowed pursuant to 11 U.S.C. § 502.

United States' Objection - 1 -  
to Confirmation of  
Amended Chapter 13 Plan

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1           3. The Internal Revenue Service's secured claim must be  
2 paid in full with interest at the rate specified in 26 U.S.C. §  
3 6621. 11 U.S.C. § 1322(a)(5).

4           4. The Plan is not feasible. For a bankruptcy court to  
5 confirm a plan, each of the requirements of section 1325 must be  
6 present, and the debtor has the burden of proving that each  
7 element has been met. In re Barnes, 32 F.3d 405, 407 (9<sup>th</sup> Cir.  
8 1994); In re Hill, 26 8 B.R. 4548, 552 (9<sup>th</sup> Cir. BAP 2001); In re  
9 Snyder, 420 B.R. 794, 801 (Bankr. Mont. 2009).

10          5. Section 1325(a)(6) of the Bankruptcy Code requires that  
11 the debtor will be able to make all payments under the plan and  
12 to comply with the plan. The debtor must prove that the plan  
13 has a reasonable chance of success or, in other words, is  
14 feasible. In Launderville, 2011 Bankr. LEXID 2003 \*10 (Bankr.  
15 Mont. 2011).

16          6. While 11 U.S.C. § 1325(b)(8) allows a plan to be  
17 partially funded through the sale of property of the estate or  
18 debtor, issues of adequate protection and feasibility arise  
19 where the debtor proposes only minimal or no payment to the  
20 secured creditor. Id. at \*11; In re Gavia, 24 B.R. 573, 575  
21 (9<sup>th</sup> Cir. BAP. 1982). Where a debtor's plan just proposes a sale  
22 of real property, it is essentially a mere Chapter 7 liquidation  
23 and renders 11 U.S.C. § 109(e) meaningless. Id.

24          7. The debtor's Plan makes no provision for any monthly  
25 payment on the Service's secured claim. The Plan states at

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1 XII. 3. the debtor intends to sell or refinance her residence by  
2 the end of the plan to pay the Service's secured claim. That is  
3 inadequate.

4 8. Where a plan proposes zero or token monthly payments to  
5 a secured creditor followed by the sale of property to fund a  
6 secured claim, the debtor has the burden to produce evidence as  
7 to the state of the market for the asset, past marketing  
8 efforts, current sales prospects, the existence and maintenance  
9 of any equity cushion, the terms of the listing agreement  
10 including the selling price, and any other fact that bears on  
11 whether the creditor will satisfy the secured claim under the  
12 plan. See In re Snyder, 420 B.R. at 802; In re Lindsey, 183  
13 B.R. 624, 627 (Bankr. D. Idaho 1995); In re Milano, 2012 Bankr.  
14 LEXIS 2462 \*12-13 (Bankr. N.D. Ohio 2012).

15 9. The debtor's speculative proposal to sell or refinance  
16 by the end of the plan is woefully inadequate. The Service's  
17 secured claim is not adequately protected. The plan is not  
18 feasible and cannot be confirmed.

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1 WHEREFORE, the United States respectfully requests that  
2 the Court deny confirmation of debtor's Amended Chapter 13 Plan.

3 DATED this 24th of June, 2013.

4  
5 JENNY A. DURKAN  
United States Attorney

6  
7 By: /s/ Catherine L. Campbell  
8 Catherine L. Campbell, WSBA 2482  
9 Special Assistant U.S. Attorney  
10 Office of Chief Counsel, IRS  
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Seattle, WA 98174  
Phone: (206) 220-5637  
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In re: ) Case No. 12-21877  
TOVA E. CUBERT, )  
Debtor. ) CERTIFICATE OF SERVICE  
)  
)  
)

The undersigned hereby certifies that (s)he is an employee of the Office of the Chief Counsel, Internal Revenue Service, Seattle, Washington, and is a person of such age and discretion as to be competent to serve papers; that on the date set forth below (s)he served a copy (or copies) of the UNITED STATES' OBJECTION TO CONFIRMATION OF AMENDED CHAPTER 13 PLAN on the persons hereinafter named by ECF:

Christina L. Henry	K. Michael Fitzgerald
Attorney for Debtor	Chapter 13 Trustee

DATED this 24th day of June, 2013.

/s/ Catherine L. Campbell

CERTIFICATE OF SERVICE - 1 - Special Assistant United  
States Attorney  
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